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RADPAD, INC.

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION  
14

15 CRAIGSLIST, INC., a Delaware corporation,  
16 Plaintiff,  
17  
18 v.  
19 RADPAD, INC., a Delaware corporation, and  
DOES 1-10,  
20 Defendants.

CASE NO. 3:16-cv-1856

**RADPAD, INC.'S ANSWER AND  
COUNTERCLAIM**

**DEMAND FOR JURY TRIAL**

1 Defendant RadPad, Inc. answers the allegations made by Plaintiff craigslist, Inc., a  
2 Delaware corporation, in its Complaint as follows:

3 **NATURE OF THE ACTION**

4 1. RadPad admits that craigslist.org is a website on which users may offer or search  
5 for certain goods or services. RadPad lacks sufficient information to admit or deny the remaining  
6 allegations of paragraph 1 and, on that basis, denies them.

7 2. RadPad admits that it offers online services that, among other things, allow users  
8 to view real estate listings, and that it competes against craigslist in certain geographic markets  
9 for certain users. RadPad denies the remaining allegations in paragraph 2.

10 3. RadPad admits that the Court granted craigslist's motion to relate this case to the  
11 3Taps litigation described in the first sentence of paragraph 3; RadPad had not appeared in the  
12 case at the time that motion was granted. RadPad denies the second sentence of paragraph 3.  
13 RadPad lacks sufficient information to admit or deny the allegations in the third sentence of  
14 paragraph 3 and, on that basis, denies them. RadPad admits that craigslist sued 3Taps, Discover  
15 Home Network Inc. ("Lovely"), and PadMapper, Inc. for copyright infringement and other  
16 claims. RadPad lacks sufficient information to admit or deny the remaining allegations in the  
17 fourth sentence of paragraph 3 and, on that basis, denies them. RadPad denies the remaining  
18 allegations in paragraph 3.

19 4. RadPad admits that, during certain time periods, it received user listing  
20 information from 3Taps that may also have appeared on craigslist's website. RadPad denies the  
21 remaining allegations in paragraph 4.

22 5. RadPad denies the allegations of paragraph 5.

23 **JURISDICTION**

24 6. RadPad admits that craigslist's Complaint alleges claims under the statutes cited in  
25 paragraph 6, but it denies any violations of any federal or state statute or any contract. RadPad  
26 denies the remaining allegations in paragraph 6.

27 7. RadPad denies that craigslist has injury in fact sufficient to convey standing for the  
28 CAN-SPAM and CFAA claims under 28 U.S.C. § 1331, but it otherwise admits that this Court

1 has jurisdiction over the subject matter. RadPad denies any violations of any federal statute.  
2 RadPad denies the remaining allegations in paragraph 7.

3 8. If craigslist has standing under Article III per paragraph 7, then RadPad admits  
4 that this Court has supplemental jurisdiction over the remaining claims but denies any violations  
5 of any federal or state statute or common law. RadPad denies the remaining allegations in  
6 paragraph 8.

7 9. RadPad admits that this Court has personal jurisdiction over it because RadPad  
8 conducts business and maintains offices in this State. RadPad denies that it has consented to  
9 personal jurisdiction in this State by agreeing to craigslist's Terms of Use ("TOU"). To the extent  
10 that the allegations in paragraph 9 relate to defendants other than RadPad, RadPad is without  
11 information sufficient to form a belief as to the truth of the allegations in paragraph 9 and  
12 therefore denies the same. RadPad denies the remaining allegations in paragraph 9.

### 13 VENUE

14 10. RadPad denies that RadPad has consented to venue in this District by agreeing to  
15 craigslist's TOU and denies that any of RadPad's conduct has occurred in this District. RadPad  
16 admits that craigslist operates in this District. To the extent that the allegations in paragraph 10  
17 relate to defendants other than RadPad, RadPad is without information sufficient to form a belief  
18 as to the truth of the allegations in paragraph 10 and therefore denies the same. RadPad denies the  
19 remaining allegations in paragraph 10.

### 20 INTRADISTRICT ASSIGNMENT

21 11. RadPad admits that Civil L.R. 3-2(c) permits this Action to be assigned on a  
22 district-wide basis, but it denies any violation of any intellectual property or other law. RadPad  
23 denies the remaining allegations in paragraph 11.

### 24 THE PARTIES

25 12. RadPad is without information sufficient to form a belief as to the truth of the  
26 allegations in paragraph 12 and therefore denies the same.

27 13. RadPad admits the allegations in paragraph 13.

28 14. RadPad is without information sufficient to form a belief as to the truth of the

allegations in paragraph 14 and therefore denies the same.

## **GENERAL ALLEGATIONS**

### **The craigslist Classified Ad Service**

15. RadPad admits that craigslist states that it was founded in San Francisco in 1995 by Craig Newmark. RadPad is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph 15 and therefore denies the same, including any implication in the remainder of paragraph 15 that RadPad is not an “authorized user[]” and that craigslist’s efforts to block use of its site by third parties are anything other than anti-competitive measures that ultimately harm craigslist’s users and the general public.

16. RadPad admits that the third sentence of paragraph 16 accurately quotes provisions contained in one version of craigslist’s TOU. RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 16 regarding craigslist’s past experience or resulting actions and therefore denies the same. RadPad denies the remaining allegations in paragraph 16.

17. RadPad denies that all craigslist users are bound by the TOU. RadPad admits that users can browse ads on craigslist posted by other users and that users’ ads on craigslist can include a title, description, and other details. RadPad is without information sufficient to form a belief as to the remaining allegations in paragraph 17 and therefore denies the same.

### **The 3taps Litigation**

18. RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 18 and therefore denies the same.

19. RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 19 and therefore denies the same.

20. RadPad denies having been a “customer” of 3taps. RadPad is without information sufficient to form a belief as to the remaining allegations in paragraph 20 and therefore denies the same.

21. RadPad admits the allegations in paragraph 21 regarding craigslist’s lawsuits against 3taps, PadMapper, and Lovely, which are a matter of public record.

### **3taps' Copyright Infringements**

22. RadPad admits that craigslist filed applications to register the posts listed in the chart following paragraph 22 with the U.S. Copyright Office, as these are a matter of public record, but specifically denies that the existence of those registrations creates copyrightable subject matter. RadPad is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph 22 and therefore denies the same.

23. RadPad denies that the conduct described in paragraph 23 constitutes copyright infringement; it further states that it is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph 23 and therefore denies the same.

24. RadPad admits that permanent injunctions were entered against 3taps, PadMapper, and Lovely in the 3taps litigation, as these are in the public record; the language of the injunctions speaks for itself as to its effect. RadPad is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph 24 and therefore denies the same.

### **Final Judgments and Permanent Injunctions In The 3taps Litigation**

25. RadPad admits the allegations in the first sentence of paragraph 25, which are a matter of public record. RadPad denies that the Complaint filed and served by craigslist in this matter attached any exhibits. RadPad is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph 25 and therefore denies the same.

26. RadPad admits the allegations in the first sentence of paragraph 26, which are a matter of public record. RadPad denies that the Complaint filed and served by craigslist in this matter attached any exhibits. RadPad is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph 26 and therefore denies the same.

27. RadPad admits that permanent injunctions were entered against 3taps, PadMapper, and Lovely in the 3taps litigation, as these are in the public record; the language of the injunctions speaks for itself as to its effect. RadPad is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph 27 and therefore denies the same.

### **RadPad's Relationship With 3taps**

28. RadPad admits having used the free service provided by 3taps, but it denies having

1 been a “customer” of 3taps, denies that the listings were misappropriated, and denies each  
2 remaining allegation in paragraph 28.

3 29. RadPad denies each allegation in paragraph 29 related to RadPad. RadPad is  
4 without information sufficient to form a belief as to the truth of the remaining allegations in  
5 paragraph 29 and therefore denies the same.

6 30. RadPad admits that it received communications from craigslist on December 4,  
7 2013, and January 13, 2014, that it was using portions of data provided by 3taps for a certain  
8 period before those dates, and that paragraph 30 accurately quotes certain statements from those  
9 letters. RadPad denies the allegations regarding the legal effect of those letters, including that the  
10 letters could or did effectively revoke the right to use or access the craigslist website. RadPad  
11 further denies that the letters were attached as exhibits to this Complaint. RadPad denies the  
12 remaining allegations in paragraph 30.

### 13 **RadPad’s Current Conduct**

14 31. RadPad admits that after June 2015 it initiated some commercial electronic  
15 messages. RadPad further admits that after June 2015 it obtained certain information that was on  
16 craigslist’s public website. RadPad denies the remaining allegations in paragraph 31.

17 32. RadPad denies the allegations of paragraph 32.

18 33. RadPad admits contacting certain craigslist users regarding their posts. To the  
19 extent that the allegations in paragraph 33 relate to defendants other than RadPad, RadPad is  
20 without information sufficient to form a belief as to the truth of the allegations in paragraph 33  
21 and therefore denies the same. RadPad denies the remaining allegations in paragraph 33.

22 34. RadPad admits to having sent emails to certain craigslist users from standard  
23 business email addresses, but it denies that such email addresses or signatures were fraudulent or  
24 materially misleading. RadPad denies the remaining allegations in paragraph 34.

25 35. RadPad admits that it sent emails sent to certain craigslist users and that some of  
26 those emails contained the subject lines including those cited in paragraph 35, but it denies the  
27 subject lines were deceptive. To the extent that the allegations in paragraph 35 relate to  
28 defendants other than RadPad, RadPad is without information sufficient to form a belief as to the

1 truth of the allegations in paragraph 35 and therefore denies the same. RadPad denies the  
2 remaining allegations in paragraph 35.

3 36. RadPad admits that the email excerpted in paragraph 36 is reproduced accurately,  
4 but it denies that the email was spam, misleading, or deceptive. RadPad denies the remaining  
5 allegations in paragraph 36.

6 37. RadPad admits that the email excerpted in paragraph 37 is reproduced accurately,  
7 but it denies that the email was spam, misleading, or deceptive. RadPad denies the remaining  
8 allegations in paragraph 37.

9 38. RadPad admits that the shortened URL in certain emails it sent to craigslist users  
10 led to a page on the RadPad website, that the page included a sign up box in the foreground with  
11 certain contact information pre-populated, and that the background of the page included text and  
12 images from the ad the user posted to craigslist. RadPad further admits that the first two  
13 sentences of paragraph 38 generally describe the way in which a person clicking on a RadPad link  
14 may have been brought to the RadPad website, but it denies paragraph 38's implication that the  
15 use of craigslist users' contact information or of materials included in the users' publicly  
16 available ads is improper or violates any laws. RadPad denies the remaining allegations in  
17 paragraph 38.

### 18 **Irreparable Harm**

19 39. To the extent that the allegations in paragraph 39 relate to defendants other than  
20 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
21 in paragraph 39 and therefore denies the same. RadPad denies the remaining allegations in  
22 paragraph 39.

23 40. To the extent that the allegations in paragraph 40 relate to defendants other than  
24 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
25 in paragraph 40 and therefore denies the same. RadPad denies the allegations in paragraph 40.

### 26 **FIRST CLAIM FOR RELIEF**

#### 27 **Breach of Contract**

28 41. RadPad reasserts its answers in all the preceding paragraphs as if fully set forth

1 herein.

2 42. RadPad admits that craigslist's site contained links to craigslist's TOU and that, at  
3 least as of today, craigslist users must affirmatively accept the TOU before posting an ad.  
4 RadPad is without information sufficient to form a belief as to the truth of the allegation that users  
5 were required to accept the TOU before posting an ad at all relevant times and therefore denies  
6 the same. RadPad denies that the links are "prominently displayed," and further denies the  
7 remaining allegations in paragraph 42.

8 43. To the extent that the allegations in paragraph 43 relate to defendants other than  
9 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
10 in paragraph 43 and therefore denies the same. RadPad denies the remaining allegations in  
11 paragraph 43.

12 44. To the extent that the allegations in paragraph 44 relate to defendants other than  
13 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
14 in paragraph 44 and therefore denies the same. RadPad denies the remaining allegations in  
15 paragraph 44.

16 45. To the extent that the allegations in paragraph 45 relate to defendants other than  
17 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
18 in paragraph 45 and therefore denies the same. RadPad denies the remaining allegations in  
19 paragraph 45.

20 46. To the extent that the allegations in paragraph 46 relate to defendants other than  
21 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
22 in paragraph 46 and therefore denies the same. RadPad denies the remaining allegations in  
23 paragraph 46.

24 47. RadPad denies each allegation in paragraph 47.

25 48. To the extent that the allegations in paragraph 48 relate to defendants other than  
26 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
27 in paragraph 48 and therefore denies the same. RadPad denies the remaining allegations in  
28 paragraph 48.



49. RadPad is without sufficient information to form a belief as to the truth of the allegations in paragraph 49 and on that basis denies the same.

50. To the extent that the allegations in paragraph 50 relate to defendants other than RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 50 and therefore denies the same. RadPad denies the remaining allegations in paragraph 50.

51. RadPad denies each allegation in paragraph 51.

## **SECOND CLAIM FOR RELIEF**

### **CAN-SPAM: 15 U.S.C. § 7701 *et seq.***

52. RadPad reasserts its answers in all the preceding paragraphs as if fully set forth herein.

53. RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 53 and therefore denies the same.

54. RadPad admits the allegations in paragraph 54.

55. To the extent that the allegations in paragraph 55 relate to defendants other than RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 55 and therefore denies the same. RadPad denies the remaining allegations in paragraph 55.

56. To the extent that the allegations in paragraph 56 relate to defendants other than RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 56 and therefore denies the same. RadPad denies the remaining allegations in paragraph 56.

57. To the extent that the allegations in paragraph 57 relate to defendants other than RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 57 and therefore denies the same. RadPad denies the remaining allegations in paragraph 57.

58. To the extent that the allegations in paragraph 58 relate to defendants other than RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations

1 in paragraph 58 and therefore denies the same. RadPad denies the remaining allegations in  
2 paragraph 58.

3 59. To the extent that the allegations in paragraph 59 relate to defendants other than  
4 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
5 in paragraph 58 and therefore denies the same. RadPad denies the remaining allegations in  
6 paragraph 59.

7 60. To the extent that the allegations in paragraph 60 relate to defendants other than  
8 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
9 in paragraph 60 and therefore denies the same. RadPad denies the remaining allegations in  
10 paragraph 60.

11 61. To the extent that the allegations in paragraph 61 relate to defendants other than  
12 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
13 in paragraph 61 and therefore denies the same. RadPad denies the remaining allegations in  
14 paragraph 61.

15 62. To the extent that the allegations in paragraph 62 relate to defendants other than  
16 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
17 in paragraph 62 and therefore denies the same. RadPad denies the remaining allegations in  
18 paragraph 62.

19 63. RadPad denies each allegation in paragraph 63.

20 64. RadPad denies each allegation in paragraph 64.

21 65. To the extent that the allegations in paragraph 65 relate to defendants other than  
22 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
23 in paragraph 65 and therefore denies the same. RadPad denies the remaining allegations in  
24 paragraph 65.

25 66. To the extent that the allegations in paragraph 66 relate to defendants other than  
26 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
27 in paragraph 66 and therefore denies the same. RadPad denies the remaining allegations in  
28 paragraph 66.

67. RadPad denies each allegation in paragraph 67.

### **THIRD CLAIM FOR RELIEF**

#### **Restrictions on Unsolicited Commercial Email Advertisers:**

#### **Cal. Bus. & Prof. Code §§ 17529 *et seq.***

68. RadPad reasserts its answers in all the preceding paragraphs as if fully set forth herein.

69. RadPad denies the allegations in paragraph 69.

70. To the extent that the allegations in paragraph 70 relate to defendants other than RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 70 and therefore denies the same. RadPad admits that certain electronic messages RadPad has sent are “commercial e-mail advertisements” as defined in Cal. Bus. & Prof. Code § 17529.1. RadPad denies the remaining allegations in paragraph 70.

71. RadPad admits that certain emails from RadPad were sent from California. RadPad is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph 71 and therefore denies the same.

72. To the extent that the allegations in paragraph 72 relate to defendants other than RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 72 and therefore denies the same. RadPad denies the remaining allegations in paragraph 72.

73. To the extent that the allegations in paragraph 73 relate to defendants other than RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 73 and therefore denies the same. RadPad denies the remaining allegations in paragraph 73.

74. To the extent that the allegations in paragraph 74 relate to defendants other than RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 74 and therefore denies the same. RadPad denies the remaining allegations in paragraph 74.

75. RadPad denies each allegation in paragraph 75.

**FOURTH CLAIM FOR RELIEF**

**Computer Fraud and Abuse Act: 18 U.S.C. § 1030 *et seq.***

76. RadPad reasserts its answers in all the preceding paragraphs as if fully set forth herein.

77. RadPad admits each allegation in paragraph 77.

78. To the extent that the allegations in paragraph 78 relate to defendants other than RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 78 and therefore denies the same. RadPad denies the remaining allegations in paragraph 78.

79. To the extent that the allegations in paragraph 79 relate to defendants other than RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 79 and therefore denies the same. RadPad denies the remaining allegations in paragraph 79.

80. To the extent that the allegations in paragraph 80 relate to defendants other than RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 80 and therefore denies the same. RadPad denies the remaining allegations in paragraph 80.

81. RadPad denies each allegation in paragraph 81.

82. To the extent that the allegations in paragraph 82 relate to defendants other than RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 82 and therefore denies the same. RadPad denies the remaining allegations in paragraph 82.

**FIFTH CLAIM FOR RELIEF**

**California Comprehensive Computer Access and Fraud Act: Cal. Penal Code § 502**

83. RadPad reasserts its answers in all the preceding paragraphs as if fully set forth herein.

84. To the extent that the allegations in paragraph 84 relate to defendants other than RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations

1 in paragraph 84 and therefore denies the same. RadPad denies the remaining allegations in  
2 paragraph 84.

3 85. To the extent that the allegations in paragraph 85 relate to defendants other than  
4 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
5 in paragraph 85 and therefore denies the same. RadPad denies the remaining allegations in  
6 paragraph 85.

7 86. To the extent that the allegations in paragraph 86 relate to defendants other than  
8 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
9 in paragraph 86 and therefore denies the same. RadPad denies the remaining allegations in  
10 paragraph 86.

11 87. To the extent that the allegations in paragraph 87 relate to defendants other than  
12 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
13 in paragraph 87 and therefore denies the same. RadPad denies the remaining allegations in  
14 paragraph 87.

15 88. To the extent that the allegations in paragraph 88 relate to defendants other than  
16 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
17 in paragraph 88 and therefore denies the same. RadPad denies the remaining allegations in  
18 paragraph 88.

19 89. To the extent that the allegations in paragraph 89 relate to defendants other than  
20 RadPad, RadPad is without information sufficient to form a belief as to the truth of the allegations  
21 in paragraph 89 and therefore denies the same. RadPad denies the remaining allegations in  
22 paragraph 89.

### 23 **SIXTH CLAIM FOR RELIEF**

#### 24 **Contributory Copyright Infringement: 17 U.S.C. § 501**

25 90. RadPad reasserts its answers in all the preceding paragraphs as if fully set forth  
26 herein.

27 91. RadPad denies each allegation in paragraph 91.

28 92. RadPad admits that craigslist never expressly authorized or licensed RadPad to use

any of its copyrighted works. RadPad is without information sufficient to form a belief as to the truth of the allegations in paragraph 92 and therefore denies the same.

93. RadPad denies each allegation in paragraph 93.

94. RadPad denies each allegation in paragraph 94.

95. RadPad denies each allegation in paragraph 95.

96. RadPad denies each allegation in paragraph 96.

RadPad denies that craigslist is entitled to any relief against RadPad, including but not limited to the relief requested in the prayer.

### **AFFIRMATIVE AND OTHER DEFENSES**

RadPad sets forth below its affirmative defenses. By setting forth these affirmative defenses, RadPad does not assume the burden of proving any fact, issue, or element of a claim where such burden properly belongs to craigslist.

#### **First Defense (Failure to State a Claim)**

97. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

#### **Second Defense (Lack of Standing)**

98. The Complaint, in whole or in part, fails because craigslist lacks injury in fact and lacks standing under Article III of the U.S. Constitution.

#### **Third Defense (Laches, Waiver, Estoppel)**

99. The Complaint, in whole or in part, is precluded by the doctrines of laches, waiver, and estoppel.

#### **Fourth Defense ("One Satisfaction" Rule)**

100. The Complaint, in whole or in part, fails under the "one satisfaction rule" because craigslist has already obtained a recovery from 3taps for the alleged acts of direct copyright infringement underlying its claims of contributory copyright infringement against RadPad.

#### **Fifth Defense (Unclean Hands)**

101. The Complaint, in whole or in part, is barred by the doctrine of unclean hands.

Sixth Defense (Fair Use)

102. The Complaint fails, in whole or in part, because any alleged use of craigslist's allegedly copyrighted materials constitutes fair use.

Seventh Defense (De Minimis Use)

103. The Complaint fails, in whole or in part, because any alleged use of craigslist's allegedly copyrighted materials is de minimis.

Eighth Defense (Material Not Owned by craigslist)

104. The Complaint fails, in whole or in part, because at least certain of the allegedly copyrighted material allegedly copied is not owned by or registered to craigslist.

Ninth Defense (Lack Of Copyrightable Subject Matter)

105. The Complaint fails, in whole or in part, because the alleged copyrighted works fail to comprise copyrightable subject matter, in whole or in part, whether through the doctrine of merger or otherwise..

Tenth Defense (Fraudulent, Improper, Invalid Copyright Registrations)

106. The Complaint fails, in whole or in part, because the copyright registrations are fraudulent, improper, or invalid.

Eleventh Defense (License)

107. The Complaint fails, in whole or in part, because craigslist licensed, explicitly or implicitly, the alleged copyrighted works.

Twelfth Defense (Unconscionable)

108. The Complaint fails, in whole or in part, because the craigslist Terms Of Use are unconscionable.

Thirteenth Defense (Copyright Misuse)

109. The Complaint fails, in whole or in part, because craigslist's assertion of copyright over user listings and/or user listing content, through litigation and otherwise, constitutes copyright misuse.

Fourteenth Defense (Failure to Mitigate Damages)

110. The Complaint fails, in whole or in part, because craigslist has failed to mitigate

any of its alleged damages.

**WHEREFORE**, RadPad requests relief as follows:

1. craigslist takes nothing by this action.
2. craigslist's Complaint be dismissed with prejudice.
3. RadPad be awarded costs and attorney's fees under 17 U.S.C. § 505, and
4. RadPad recover such other relief as the Court may deem appropriate.



**COUNTERCLAIMS**

RadPad, Inc. alleges the following Counterclaims against craigslist, Inc., based on personal knowledge as to its own acts and on information and belief as to all other matters.

**THE PARTIES**

1. RadPad is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Los Angeles, California.

2. According to the Complaint, craigslist is a Delaware corporation with its principal place of business in San Francisco, California.

**JURISDICTION AND VENUE**

3. These Counterclaims are asserted under Rule 13 of the Federal Rules of Civil Procedure and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court has subject matter jurisdiction over these Counterclaims pursuant to 28 U.S.C. § 1331 for the second Counterclaim because it involves questions of federal law, and pursuant to 28 U.S.C. § 1367(a) for the first Counterclaim, which arises from the same transactions and from a common nucleus of operative facts as alleged in the federal causes of action alleged in this Complaint.

**NATURE OF THE CASE**

4. This is an action for declaratory and injunctive relief against craigslist based on craigslist's unfair competition against RadPad. craigslist is a major power in the lucrative, important classified-ad business. craigslist has gone to great lengths to maintain its dominance in the online classified-ad space. craigslist wields its power against those who attempt to enter the online classified-ad space and prevents their lawful expansion into a business that craigslist considers to be its own.

5. RadPad is one such innovative company that craigslist has improperly targeted. Founded in 2013 with the aim of making the process of matching renters and property owners faster and more intuitive, RadPad currently has over one million listings of apartments and homes, with renters paying millions of dollars in rent each month through RadPad's app.

6. Rental housing availability on RadPad and craigslist frequently overlaps, due to the nature of the housing market, the desire of customers to list on multiple sites, and the fact that

1 craigslist has local sites in every city in which RadPad operates.

2 7. craigslist's public website, while widely used, has an anachronistic interface,  
3 prompting renters and property owners to instead use RadPad's feature-rich, user-friendly app  
4 and website.

5 8. RadPad, like other businesses and individuals, accesses craigslist's public website,  
6 just as it accesses other publicly available websites, to monitor the competition and generally  
7 conduct market research, as well as to identify potential landlords.

8 9. To maintain its market share over RadPad and attempt to stop RadPad's rapid  
9 growth, craigslist's efforts to exclude RadPad and others have included issuing improper cease-  
10 and-desist letters to RadPad and others. The intent of letters such as these has been to prevent  
11 visitation by companies that craigslist sees as competitors from accessing a website available to  
12 the general public, all in an effort to restrict perceived competition and claim exclusive ownership  
13 over rental opportunities involving landlords and renters that visit craigslist's site.

14 10. craigslist's efforts to deter or deny RadPad's access to its site threatens to cause  
15 RadPad harm. Along with many other sources, RadPad was working with this publicly available  
16 information to further develop its site and grow to serve larger numbers of people. The  
17 prospective loss of this market information threatens to harm RadPad by reducing legitimate  
18 business opportunities and clients and by increasing RadPad's costs of business.

19 11. Moreover, craigslist's efforts to deter or deny RadPad, along with others, from  
20 ever accessing craigslist's "public" website, harms the general public. Market forces have created  
21 significant pressures on renters, including those in this District, and the burden on the public of  
22 finding affordable rental housing has significantly increased as a result. craigslist's insistence  
23 that its basic platform alone be allowed to serve this market does a serious disservice to the state  
24 of competition in the online classified-ad market for housing rentals and harms countless people  
25 who are looking for a better way to find a place to rent.

26 12. In addition, on information and belief, craigslist has taken steps to automatically  
27 prevent email messages containing the word RadPad from being delivered to landlords in  
28 response to listings on craigslist, whether the email messages were sent by prospective renters or

others. Thus, craigslist is screening emails between landlords and prospective renters, to the detriment of both and also to the detriment of RadPad. craigslist's screening is designed to suppress competition.

13. Still further, on information and belief, craigslist has taken steps to prevent landlords from using RadPad's features or services to place their listings on craigslist as well, creating an additional obstacle to competition.

### **COUNT I**

#### **(Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

14. RadPad repeats and incorporates by reference the allegations set forth in Paragraphs 1 through 13 as if fully set forth herein.

15. craigslist is a "person" within the meaning of Cal. Bus. & Prof. Code § 17201.

16. craigslist's conduct described above constitutes "unfair" business acts and practices under all alternative versions of the test for such unfair acts and practices. It significantly threatens to harm or harms competition, there is no substantial countervailing benefit, and the actual and threatened harm to consumers outweighs the utility of allowing craigslist's anticompetitive practices to continue.

17. RadPad has suffered and will continue to suffer harm as the direct and proximate result of craigslist's unfair acts and practices.

18. Unless enjoined by this Court, craigslist's improper conduct will continue, and RadPad will be further harmed.

### **COUNT II**

#### **(Declaratory Judgment of Rights)**

19. RadPad repeats and incorporates by reference the allegations set forth in Paragraphs 1 through 18 as if fully set forth herein.

20. RadPad seeks a declaratory judgment against craigslist to establish that RadPad's actions in accessing RadPad's website are lawful, are not improper, and do not constitute a violation of the Computer Fraud and Abuse Act (18 U.S.C. § 1030) or California's Comprehensive Computer Access and Fraud Act (Cal. Penal Code § 502).

21. RadPad further seeks a declaratory judgment against craigslist to establish that craigslist's attempts to deter or deny RadPad from accessing craigslist's public website are improper, unlawful, and anticompetitive.

22. RadPad also seeks a declaratory judgment against craigslist to establish that it is unlawful for craigslist to purport to restrict from its public website individuals or companies based on the individuals or companies being competitors or seeking to obtain publicly available information about and from craigslist.

23. RadPad further seeks a declaratory judgment against craigslist to establish that craigslist is wrongfully asserting copyright protection for elements of housing rental listings that are not copyrightable subject matter.

### **PRAYER FOR RELIEF**

WHEREFORE, RadPad demands that judgment be entered in its favor and against craigslist:

- (a) declaring that craigslist shall take nothing by way of this Complaint;
- (b) declaring that craigslist's conduct alleged in this Counterclaim is judged to be unfair in violation of Sections 17200 *et seq.* of the California Business and Professions Code, and enjoining such conduct;
- (b) declaring that RadPad's access of craigslist's public website is not illegal or otherwise improper;
- (c) declaring that it is unlawful for craigslist to purport to restrict from its public website individuals or companies based on the individuals or companies being competitors or seeking to obtain publicly available information about and from craigslist;
- (d) declaring that craigslist may not assert copyright protection for elements of housing rental listings that are not copyrightable subject matter;
- (e) awarding costs of suit; and
- (f) awarding all other relief the court deems proper.

1 Dated: May 18, 2016

O'MELVENY & MYERS LLP

2 By: /s/ Randall W. Edwards  
3 Randall W. Edwards

4 Attorneys for Defendant  
5 RadPad, Inc.  
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**DEMAND FOR JURY TRIAL**

Defendant and cross-complainant RadPad, Inc. requests a jury trial in this matter on all claims so triable.

Dated: May 18, 2016

O'MELVENY & MYERS LLP

By: /s/ Randall W. Edwards  
Randall W. Edwards

Attorneys for Defendant  
RadPad, Inc.